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Appl. No. 10/680,648

Atty. Docket No. 30207US01

REMARKS

This application has been carefully reviewed in light of the Office Action dated September 8, 2004. By way of this amendment, claims 1, 4-6, 8, 9, 17 and 19 have been amended and claims 3 and 18 have been cancelled. New claims 20 and 21 have been added; support for these new claims can be found in paragraph 0020 of the present specification. Claims 1, 2, 4-17 and 19-21 are currently pending in the application. Applicant hereby requests further examination and reconsideration in view of the following remarks.

1. The Examiner has objected to claims 10 and 12-18 under 37 CFR 1.75 as being substantial duplicates of claims 3-9. This ground of objection is respectfully traversed.

As an initial point, applicant respectfully submits that the objection to claims 10 and 12-18 is premature. MPEP § 706.03(k) states that it is proper to object to a claim as being a substantial duplicate of another claim *after allowing the other claim*. In this case, the Examiner has not allowed any of the claims in question. As such, it is believed that the current objection is improper.

Moreover, applicant respectfully submits that the claims in question, while admittedly being similar, are sufficiently different in scope so as not to be objectionably duplicative. MPEP § 706.03(k) indicates that applicants are free to restate (through plural claiming) an invention in a reasonable number of ways, stating that "a mere difference in scope between claims has been held to be enough." Here, applicant has two sets of claims defining the claimed ladder stand-off. Comparing independent claim 1 (which has been amended to include the subject matter of claim 3) to independent claim 10 reveals a difference in scope in that claim 1 recites that the first and second arms "extend outward from said beam so as to be angularly divergent with respect to each other" while claim 10 merely recites that the first and second arms "extend outward from said

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beam." Thus, there is a difference in scope between claims 1 and 10, and the claims depending therefrom. Applicant respectfully submits that claiming the invention in only two different ways is reasonable per MPEP § 706.03(k) and should be permitted.

For the above reasons, it is respectfully requested that the objection to the claims be withdrawn.

2. The Examiner has rejected claims 7 and 9 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner contends that it is not clear whether applicant is claiming a ladder stand-off or a ladder stand-off in combination with a ladder. This ground of rejection is respectfully traversed.

Applicant respectfully submits that the claims clearly recite a ladder stand-off only, not the combination of a ladder stand-off and a ladder. The preambles of independent claims 1 and 10 clearly set forth a "ladder stand-off for use with a ladder" and the dependent claims recite "the ladder stand-off," showing that the claims are drawn to a ladder stand-off alone. Contrary to the Examiner's assertion, it is respectfully submitted that claims 7 and 9 do not "positively recite" the ladder. Claim 7 states that the predetermined distance (i.e., the distance between the first ends of the first and second arms) is less than the ladder width. Claim 9 recites that the second (outer) ends of the first and second arms are spaced apart a distance that is equal to the ladder width. Thus, each claim further limits a physical feature of the ladder stand-off by defining the feature relative to the ladder width. The ladder is merely being used as a point of comparison and is not being recited as an element of the claimed product.

Accordingly, applicant respectfully submits that claims 7 and 9 are definite within the meaning of 35 U.S.C. § 112, second paragraph. Applicant also submits that claims 15 and 17, which have not been rejected but contain similar language as claims 7 and 9, respectively, are also definite.

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3. The Examiner has rejected claims 1-19 under 35 U.S.C. § 102(b) as being anticipated by Perry (3,715,012). This ground of rejection is respectfully traversed.

Independent claims 1 and 10 both recite a ladder stand-off comprising a beam, a first arm fixedly connected at a first end thereof to the beam, and a second arm fixedly connected at a first end thereof to the beam. The first and second arms are spaced apart a predetermined distance and extend outward from the beam. A contact element is pivotally connected to the outer end of each arm. The ladder stand-off includes means for detachably securing the beam to a ladder. As mentioned above, claim 1 further adds that the first and second arms are angularly divergent with respect to each other.

Perry discloses a ladder stand-off or "safety device" 1 comprising a V-shaped body member 7 having a pair of diverging arms 8 and 9 that meet at a point. Extensions 10 and 11 extend from the ends of the arms 8 and 9, respectively, and flanges 12 and 13 extend outwardly from the free ends of extensions 10 and 11, respectively. A "wing" 14 and 15 extends from roughly the midpoint of the arms 8 and 9, respectively, and includes means for attaching the device 1 to a ladder.

Applicant respectfully submits that Perry fails to anticipate independent claims 1 and 10 for the following reasons. First, Perry does not show two arms fixedly connected "at a first end thereof" to a beam. The ends of the first and second arms 8 and 9 of Perry are connected together at a "V", not to a beam. The outer ends of Perry's first and second arms 8 and 9 support the extensions 10 and 11 and the flanges 12 and 13 and are not connected to a beam. The only "beams" the first and second arms 8 and 9 of Perry are connected to are the wings 14 and 15, and these connections are made at the

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midpoints of the arms 8 and 9, not "at a first end thereof" as required by claims 1 and 10.

Second, claims 1 and 10 require that the first and second arms be connected to the same beam. The arms 8 and 9 of Perry are not connected to a single beam. Instead, the first arm 8 is connected to wing 14 and the second arm 9 is connected to wing 15. Although the two wings may function together in a manner similar to a single beam, they are clearly not one beam. Furthermore, claims 1 and 10 recites that the first and second arms are connected to the beam at different points located between the ends of the beam. In contrast, Perry's first arm 8 is connected to an end of the wing 14 and the second arm 9 is connected to an end of the wing 15.

Third, contrary to the Examiner's assertion, Perry does not disclose a contact element pivotally connected to a second end of each of the first and second arms as required by claims 1 and 10. These contact elements function as pivoting heads that allow the invention to be used with any type of surface, including flat surfaces, curved surfaces, inside corners and outside corners. Perry simply does not have pivoting heads. Instead, Perry teaches the first and second arms 8 and 9, the extensions 10 and 11, and the flanges 12 and 13 can all function as "contact elements," but all of these elements are fixed relative to one another at different orientations to accommodate poles, outside corners and flat surfaces. Unlike Perry, the pivoting contact elements of the present invention are infinitely adjustable and can thus be used with any type of surface. Neither the extensions 10 and 11 nor the flanges 12 and 13 pivot or move relative to the arms 8 and 9. In the present invention, the contact elements freely pivot on the end of the arms to allow usage with curved surfaces, flat surfaces, outside corners and inside corners (Perry does not work with inside corners).

For the above reasons, it is respectfully submitted that independent claims 1 and 10 are allowable over Perry. Claims 2, 4-9, 11-17 and 19-21

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depend from claim 1 or 10 and are thus also believed to be allowable. Furthermore, at least some of these dependent claims set forth limitations not met by the prior art. For instance, Perry does not disclose the structural details of the contact elements recited in claims 4-6 and 12-14. Perry also does not teach using square tubing as recited in new claims 20 and 21.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration of the objections and rejections is requested. Allowance of claims 1, 2, 4-17 and 19-21 at an early date is solicited.

Respectfully submitted,

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Date

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